

Statement of Chairman
Reed E. Hundt on the
Access Reform and Universal Service Proceedings

The Commission's votes today on items labelled universal service and access reform follow our vote last August on interconnection, and complete the trilogy of major actions implementing the 1996 Telecommunications Act. Many, many other decisions have been made on the way, but we plainly have reached the end of phase one of the Act: the replacement of pro-monopoly rules with pro-competition rules, while at the same time extending our country's commitment to provide affordable telecommunications access to all consumers, kids, teachers, patients, and doctors.

It has been a long, wide-ranging trip for the Commission since the Act was signed in February 1996. Congress asked us to overhaul in its entirety the national policies that apply to the communications industry. We have received nearly 200,000 pages of comments, millions of Internet "hits," hundreds of thousands of emails, thousands of letters written by working men and women on kitchen tables late at night, and had hundreds of meetings with teachers, doctors, Congressmen, Senators, lobbyists, lawyers, businesspersons, and citizens. The dedicated civil servants at the agency have worked impossibly long hours and made many, many personal sacrifices. I am immensely grateful to them, and the country owes them a tremendous debt.

The work has been arduous, but it has been a joy. Throughout the process we have believed that Congress gave us a high calling --write the policies for the communications sector that will lead America into the 21st century -- and we have considered it a privilege to play our part.

Today's items mark the end of the beginning of our deregulatory, procompetitive rule-writing. By our decisions today we

--assure that local basic residential telephone service prices need not be increased by any action of the Commission or Congress, although industry achieved consensus in urging us specifically to increase local service prices by raising the residential subscriber line charge.

--guarantee that long distance prices will fall, and specifically that basic schedule customers will see their first general price decreases since 1989.

--generate economic benefits to business and residential consumers exceeding \$25 billion during the next five years (making this the single best day for consumers in this agency's history).

--begin to reduce unnecessary subsidies on multiple phone lines.

--mark the beginning of a new policy for a national data network that is based on the fundamental precept that Internet services could be in a "subsidy-free zone" -- such that internet

communication neither relies on nor gives a subsidy.

--assure that all rural telephone companies will be supported in their mission of assuring affordable service to all Americans in high cost areas.

--craft an interstate access pricing policy that invites a greater breadth of competitive entry into the local exchange market.

--create a funding mechanism that will combine national and state monies to connect every classroom in the country to the information highway.

--connect every rural health care facility in the country to the information highway.

I have attached to this statement certain representative models of the impact of today's votes on certain customers. There is no guarantee that every consumer will believe that he or she is better off as a result of today's decisions. I firmly believe, however, that as a result of today's decisions the overwhelming majority will buy more communications services with their money or will pay less for the same services they buy today. As competition makes more significant inroads in telecommunications markets these results will be increasingly dramatic.

I believe further that the replacement of the regime of monopoly with the new paradigm of competition will lead to productivity gains, job growth, investment increases, and the continuing vitality of the American economy. It is not too much to hope that our commitment to a de-regulatory, pro-competitive rule of law in our communications sector will play a significant role in persuading all nations to take this step. The triumph of the World Trade Organization negotiations on telecommunications in February makes this hope, in my view, a substantial likelihood. We can all dream that as a result world economic growth -- driven by the spread of an accessible, ubiquitous communications network -- is on the verge of massive acceleration. Nothing could be more inspiring than the vision of major progress in the global fight against poverty, disease, and misery. Nothing less than that is at stake in our effort to spark sustained, significant, competition-driven growth in our communications and information sector, as ordered by Congress in the landmark Telecommunications Act of 1996.

On a personal note, many years ago I had a conversation with then-Senator Al Gore about his wish to see a schoolgirl in Carthage, Tennessee be able to learn from the limitless resources of the Library of Congress, without being barred by time, distance, and lack of money from such opportunities. He explained to me -- and this was long before the Internet was invented -- that fiber optic cable would make the connection between the schoolgirl and a bright future.

From this conversation came this Commission's desire to include classroom connections as an essential goal of universal service. President Clinton in several State of the Union speeches and many other appearances mobilized a national commitment to this goal. And as Vice President, Al Gore has never let a week, or perhaps a day, go by without working to bring to every schoolchild

the opportunity to learn on the information highway -- a term he coined.

Thanks to the untiring efforts of Senators Snowe, Rockefeller, Exxon, Kerrey, Hollings, Congressman Markey, Secretary of Education Riley, and many others the Commission was given the legislative mandate to fund connections to every one of two million classrooms in all 100,000 schools in our country. School groups from all over the country supported these congressional initiatives and then pursued their implementation in our rules.

Today, at last, after three and one-half years of work, we can say that we have by law and rule a fully funded national commitment and national plan to connect every classroom to the information highway. We recognize that curriculum reform, teacher training, computer acquisition, software development, private foundation guidance, and much else remains to be done in order to bring the benefits of the communications revolution to the students and teachers of America.

Yet we are proud we have come this far. The Commission has delivered the result our children deserve, and I am completely delighted to have been a part of this process.

I want to acknowledge with a depth of gratitude and respect that words cannot express to all the colleagues and friends inside and outside the Commission who have helped us find our way in these decisions. Others will forgive me if I mention here only those who have been associated with my personal office team on these items: Blair Levin, John Nakahata, Karen Brinkmann, Ruth Milkman, Diane Cornell, Renee Licht, Jackie Chorney, Julius Genachowski, Tom Boasberg, Ruth Dancey, Cozette Ballestros, Monica Lizama, Aiysha Coates, Vanessa Lemme, Judith Mann, Terry Matsumoto, Laverne Braddy . It has been an enormous pleasure and honor to work with you.

Senior Citizen in Miami

- Calls grandchildren in California for 10 minutes every other week.
- No calling plan, long distance bill is about \$4.00 per month.
- Under FCC proposal, local bill is unchanged, long distance bill falls by about 8%.

Travel Agency in Sioux Falls, SD

- Three phone lines for two agents. Each agent makes about 2.5 hours of long distance calls per day.
- Total long distance bill (all lines) is about \$790 per month, about \$930 including local.

- Total bill under FCC proposal declines about \$52 or about 6%.

Funeral Parlor - Anywhere, USA

- Funeral parlor has three lines, mainly for incoming calls. Owner makes 15 minutes of long distance calls/month.
- Current total bill (local and LD) is about \$157 (\$150 local and \$7 long distance).
- Under FCC proposal, total bill increases by

about \$13.00/month.

Two Line Family in Charleston

- Young couple with two lines, college friends and relatives throughout the South.
- Current long distance bill is \$60/month under a \$.10/minute calling plan.
- Under FCC proposal, family's savings on total bill (local and long distance) is about 4%

(\$2.50).

May 7, 1997

**Statement of
Commissioner James H. Quello**

**RE: FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE
 (CC Docket No. 96-45),**

ACCESS CHARGE REFORM (CC Docket No. 96-262), and

**PRICE CAP PERFORMANCE REVIEW FOR LOCAL EXCHANGE
CARRIERS (CC Docket No. 94-1).**

Today, the Commission has established rules to implement the Universal Service provisions of the Telecommunications Act of 1996, as well as rules to restructure the access charge system while also initiating reductions in the levels of those access charges. I have believed throughout my participation in the debates regarding universal service and access reform that, as much as possible, we should seek to ensure that consumers experience the benefits of our actions. To this same end, we should try to avoid the possibility that total bills for groups of consumers could increase as a result of implementing new universal service programs and moving into a new access charge regime.

Universal Service

This Commission now has taken steps to establish processes for the administration of universal service funds in a way that allows the commitments represented in this section of the 1996 Telecommunications Act to be fulfilled. We have labored to develop a reasonable plan that will provide necessary and sufficient funds for schools and libraries as well as other universal service programs. We also have sought to avoid collection of funds beyond those legitimately needed to help make new and important services available to students and teachers in inner city, suburban and rural schools from Takoma Park, D.C., to Tacoma, Washington, from McAllen, Texas to Mackinac Island on the Upper Peninsula of Michigan.

We have achieved this balance by establishing funding necessary to begin the program at a reasonable level, with a provision that allows schools and libraries to begin the program January 1, 1998. By this time, we would hope that participating groups will have had the opportunity to develop their plans. Our decision to start the program with lower funding in the first six months, increasing in the following years, gives the program early constraint, with flexibility at later periods when greater demand is likely to develop. As a result, I believe this decision provides for new universal service funding within the limits of what consumers around the country are willing to pay.

The issue of what consumers are prepared to pay has been a very difficult one. The need for our attention to the issue, however, has been clearly expressed in many ways. It has required the

Commission to balance the need for programs involved in universal service that are critically important to the future of this country with their cost. In this respect, this universal service proceeding is one of the most important decisions in this agency's history. At the same time, we have heard a consistent message from around the country that consumers and businesses are not necessarily willing to pay for these services through higher total bills for telecommunications services.

With respect to funding for health care subsidies, we have endeavored to make sure that rural, non-profit health care facilities have sufficient funding to meet the needs for providing services in communities that otherwise might not have the same resources that are available in urban communities.

There also are many other policy and market issues that will need to be resolved in a new universal service environment. For instance, I believe it remains to be seen how cable and wireless industries will continue to develop to play a greater role in the telecommunications services that will meet future universal service needs. As these developments occur, the Commission may continue to monitor the equity of contribution and recovery of universal service funds by paging services as well as the extent to which wireless services in general should contribute for intrastate services.

Access Reform

The Commission's actions today on access reform involve two components: (1) several structural changes that will cause access components to move to more reasonable categories and to become subject to competition where possible; and (2) reductions in the current level of access charges, largely accomplished through revision of the productivity and sharing mechanism in LEC price caps.

Where this decision changes the structure of end user charges, as in our treatment of business and residential customers, and consumers with second or multiple lines, I believe our decisions should be -- and are -- characterized by balance. As a result of this necessary reform of the access payment structure, charges should remain within reasonable bounds and should help to promote the development of competition and consumer benefits.

I also believe this Commission would be remiss in our regulatory duties to the American public and responsibilities to our licensees if we were to restructure universal service without concurrently engaging in access charge reform. We have talked about this step for quite some time. Many parties have expressed their views in a very public fashion as to whether or not this step is warranted, or to what degree access charges should be reduced. I believe that this step to restructure and reduce the level of access charges is the right thing to do and this is the right time to do it.

The consumers and users of telecommunications services are the intended beneficiaries of today's

actions regarding access reform. Now that these decisions are adopted, I believe it will become clear that we have done our best to ensure that consumers do not bear the burden of implementing the new universal service program and access charge reform. Our actions also represent a fundamental part of the Commission's effort to facilitate competition in the local exchange marketplace, in this case by reducing access charges paid to LECs by interexchange carriers.

The primary vehicle for this reduction is the decision to change the existing combinations of productivity factors, or "x-factors", and sharing options to a single productivity factor of 6.5% accompanied by no sharing obligation. As a result, this decision continues the Commission's efforts to move away from the lingering remnants of rate of return regulation for local exchange carriers. Today's decision will complete the movement of price cap LECs away from the sharing obligations that were part of the past system.

Looking to the Future

I want to emphasize that today's actions represent a first step in many respects.

Concerning universal service, this is not a day to declare victory. There is much left to be done by the Commission, the states, temporary and permanent fund administrators, school districts, libraries, health care facilities, parties developing cost models, and telecommunications companies seeking to provide services and enter new markets. This is definitely an important day, but the real effort is just beginning. That effort will require investment, planning, training in using services, and community, professional, and corporate involvement, and it will only be successful after the continuing involvement, in community after community, by the many parties who have so diligently participated in this proceeding.

The Commission's action to increase the productivity factor not only results in reduced access charges in the first year, but also in further reductions in access charges in subsequent years. In another respect, it may very well become necessary very soon for the Commission to consider how to supplement today's decision to allow for pricing flexibility by LECs as competition develops to a greater level in the local marketplace. One possible way to provide that flexibility might be through relaxing the 6.5% productivity factor where LECs can meet criteria to demonstrate sufficient competition.

At the same time, later steps might also include the potential for checks and balances in the event that competition in the local exchange marketplace does not develop as soon as some seem to expect. Once again, down the road the Commission may need to consider more specific measures to ensure that the platforms necessary for competition truly are available. It is my hope that those steps won't be necessary.

Finally, some parties have warned recently that any actions by this Commission to lower access charges may cause LECs to seek to raise local phone rates. That matter will become an issue for

state commissions, and it is my hope that they will respond to any efforts to raise local rates by ensuring that consumers ultimately benefit from federal and state actions to implement the Telecommunications Act of 1996 and any related decisions.

May 7, 1997

**Separate Statement
of
Commissioner Susan Ness**

Re: Universal Service; Access Reform; Price Cap Review

Today we reach another milestone in our efforts to secure for consumers the myriad benefits made possible by the Telecommunications Act of 1996. We are steadfastly fulfilling the tasks assigned to us by Congress in a manner that will prove the wisdom -- and realize the vision -- of this landmark legislation.

Our pursuit has many facets. We must eliminate impediments to competition, ensure fair rules of engagement for all market participants, safeguard the interests of residential consumers, especially those with limited incomes and those in high cost areas, promote economic efficiency, and lower prices to consumers. Today's orders represent substantial progress on all these fronts.

Much of what we are doing is driven by law and by economics. But the results of our decisions have a human face:

Will a poor family in Appalachia be able to summon the police or fire department in an emergency?

Will a critically ill patient in a remote region of Montana have her tumor quickly and accurately diagnosed?

Will a curious high-school freshman have an opportunity to view Thomas Jefferson's valedictory letter, in his own aged but still powerful hand?

Will an elderly widow be less hesitant to break her loneliness with longer and more frequent calls to her great-grandchildren?

Today brings us closer to a day when these questions can all be answered "yes."

Fifteen months after enactment of the Telecommunications Act, the transition to a new industry paradigm remains far from complete. The road is not straight, or smooth, or free from peril. But a steady course -- and a shared determination -- can bring us to the desired destination.

We still have far to travel to resolve issues of support for high-cost areas. I believe we

have a sound plan and a clear timetable for implementation, but we still face two main obstacles. The proxy models, already impressive feats of cost engineering, still require further refinement before they can reliably be used to target federal cost support. And a new consensus must be achieved before support essential to maintain affordable telephone service in high-cost states can be drawn from states with lesser need, as I believe the Congress of the United States clearly intended. In the meantime, we can make only incremental changes in the implicit subsidies that currently support the high-cost services provided by large price cap telephone companies.

For the smaller rural companies, change will come even more gradually. This is consistent with Congress's expectation that competition would arrive more quickly in the cities and the suburbs. In the interim, we recognize that rural economies must not face unnecessary dislocations.

The need to avoid harmful dislocations, while also encouraging beneficial change, is crucial to much of what we are doing in the access reform and price cap orders. We are implementing many changes that will help to ensure an orderly transition from monopoly to fair and efficient competition.

In particular, the recovery of more costs through flat-rated charges instead of usage-sensitive charges will reduce the exposure of incumbent telephone companies to "cherry-picking" by new entrants, even as they also expand the range of customers likely to be offered competitive alternatives. Completion of the conversion to a three-part rate structure for tandem-switched transport will eliminate a historical artifact, but allow time for affected carriers to adjust. The new X-factor more accurately reflects the productivity gains that can reasonably be expected from price cap carriers, while avoiding radical reduction of telephone company access revenues and proposals that would have unfairly penalized those companies that have most assiduously conducted themselves in accordance with the incentives we deliberately created.

We prefer to rely on marketplace forces rather than regulation to drive investment decisions and price reductions. Some will fault us for not acting more aggressively; others will complain that we are too heavy-handed. My own view is that each decision, and all of the many issues in these orders, has been approached with balance and sensitivity, fairness and principle.

Not everyone will be satisfied. But no one can say that we have not read the law, considered economic theories and business realities, consulted our consciences, and sought to achieve as much fairness as is humanly possible.

I readily confess that I cannot muster the same passion for restructuring the arcane and impenetrable Transport Interconnection Charge as for devising a completely new regime to provide discounts for schools and libraries to access telecommunications and information

services. Though I am fully committed to full realization of all of the universal service provisions, the Snowe-Rockefeller-Exon-Kerry provisions reflect an especially bold vision. For our part, we have used our creativity to harness the magic of competition to reduce the costs of the support program, created incentives to ensure only prudent use of supported services, targeted discounts to minimize the danger of a widening gap between information haves and have-nots, and sought at every turn to maintain our commitment to competitive neutrality.

Even more important, we have sought to leave crucial decisions in the hands of educators and librarians, scattered throughout the country, rather than in the hands of Washington-based administrators. And, best of all, we have arranged a smooth take-off that will avoid creating unsustainable financial burdens on carriers and consumers, allowing competition and growth and declining prices -- rather than rate increases -- to supply the necessary funds.

In this area, as in the others addressed by today's orders, we have applied all our energy, and all our skill, to make the best decisions, based on our current knowledge and the law. A continuing commitment to constructive dialogue by all interested parties -- telephone companies, long distance companies, wireless companies, small businesses, large businesses, residential consumers, state regulators, and members of Congress -- is critical to continued progress. At the end of the day, fairness to all parties and demonstrable benefits to consumers are the standards by which we will all be judged.

May 7, 1997

Separate Statement of Commissioner Rachelle B. Chong

Concurring in Part, Dissenting in Part

Re: *In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45.*

I. Introduction

In compliance with Section 254 of the Telecommunications Act of 1996 ("1996 Act"), we adopt today major changes to our universal service system in order to promote telephone service for all Americans, no matter where they live. The universal service plan we set in motion today will begin the process of moving away from our past "system" of universal service policies. Our old policies relied on a patchwork quilt of both implicit and explicit subsidies both at the federal and state levels. Our new federal universal service system will be harmonious with the "procompetitive, de-regulatory national policy framework" mandated by the 1996 Act,²³¹⁶ because, for the first time, competitors to local telephone companies will be allowed to receive universal service support. Because I am a fierce advocate of the introduction of competition into all telecommunications markets, I believe that the decision we issue today is critically important for us to remain faithful to the procompetitive portions of the Act.

The Commission's job has been made difficult because the 1996 Act asks us to achieve many important, but potentially conflicting, goals. We must restructure our current hodge podge of universal service mechanisms and make it compatible with a competitive marketplace by wringing out implicit subsidies that, in a monopoly-based environment, helped to fund universal service.²³¹⁷ We must also raise funds to implement some social programs, including provision of discounted telecommunications services to eligible schools and libraries,²³¹⁸ provision of rural

²³¹⁶ Joint Explanatory Statement of the Committee of the Conference at 113 (H.R. Rep. No. 104-458).

²³¹⁷ Because Section 254(e) of the Act mandates that universal service support be "explicit and sufficient," we put in place rules that identify and convert current federal universal support to explicit federal support mechanisms. 47 U.S.C. Section 254(e).

²³¹⁸ 47 U.S.C. Section 254(h)(1)(B).

health care providers with comparable rates to urban areas,²³¹⁹ and enhancing access to the public telephone switched network by low income consumers and those living in rural, insular and high cost areas.²³²⁰ At the same time that the Commission is asked to accomplish all of these goals, however, we are also charged with ensuring that consumers receive quality services at just, reasonable and affordable rates.²³²¹

Pursuant to the mandates of the 1996 Act, we today have identified the services to be supported by the federal universal service support mechanisms, and established a timetable for implementation.²³²² We are not able to implement all of the planned changes today, however. Universal service costs are very difficult to determine because they are, for example, intermingled with other costs, such as forward looking economic costs of interstate access or historic costs associated with the provision of interstate access services. Thus, we cannot remove universal service costs from interstate access charges until we can properly identify those costs. To this end, we have undertaken a process in cooperation with our state colleagues to identify implicit subsidies and to either remove them or make them explicit. This is a time consuming process, but we have set forth a schedule to achieve the goals set out for us by January 1, 1999.

Given the mix of federal, state and consumer interests involved in our universal service decision today, it has been a formidable challenge to fashion a system of universal service support mechanisms that will achieve the principles and goals Congress set for us.²³²³ I support the majority of the item, however, I write separately to concur in part and dissent in part.

II. Contributions and Assessment

In the past, the collection of monies to fund universal service goals burdened some segments of the telecommunications industry more than others. Today, we make the collection of federal universal service contributions more fair and competitively neutral, by enlarging the sea of contributors that will help support the universal service system. I read Section 254(d) of the 1996 Act and its associated legislative history to require the Commission to cast its universal service

²³¹⁹ 47 U.S.C. Section 254(h)(1)(A).

²³²⁰ 47 U.S.C. Section 254(b)(3).

²³²¹ 47 U.S.C. Section 254(b)(1).

²³²² 47 U.S.C. Section 254(a)(2).

²³²³ Section 254(b) contains the principles set forth by the 1996 Act that have guided me in my work.

contributions net widely, to exempt only those who meet the *de minimis* test,²³²⁴ and to ensure that any contributions are made on an equitable and nondiscriminatory basis.

I respectfully dissent, however, from the portion of the Commission's decision that requires carriers providing interstate telecommunications services to base their contributions not only on interstate revenues, but on revenues derived from their foreign or international telecommunications services as well. Contrary to the statement of the majority, I believe that the Joint Board did not recommend this result. The Joint Board suggested that we construe the phrase "all carriers that provide interstate service" broadly.²³²⁵ And, the Joint Board did include "international/foreign" on the exemplary list of services whose "interstate portion" should be counted as interstate communications.²³²⁶ To leap from these statements, however, to a conclusion that the Joint Board specifically recommended that we base an interstate carrier's contribution to the universal service fund on international communications revenues as well as interstate revenues, is a jump that I cannot make.

I am also concerned that this decision is contrary to the Congressional mandate in Section 254(d) that carrier contributions to the universal service fund be on "an equitable and nondiscriminatory basis."²³²⁷ I believe that it is inequitable to include international revenues for purposes of calculating a carrier's universal service contribution because it will place any carrier with both interstate and international revenues at an economic disadvantage against other carriers that provide only international service. Once the recently-adopted World Trade Organization Agreement becomes effective, when presumably foreign carriers will compete directly with U.S. companies for the international business of U.S. customers, this disparity will place U.S. carriers at a very real competitive disadvantage. The inequity is particularly egregious in the case of a carrier such as Comsat that provides very little interstate service, but substantial international service. Requiring Comsat to contribute to the universal service fund on the basis of its international revenues is truly a case of the tail wagging the dog.

III. Scope of the Commission's Authority Over the Universal Service Support Mechanisms

²³²⁴ Joint Explanatory Statement at 131.

²³²⁵ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 87, 784 ("Joint Board Recommendation")

²³²⁶ *Joint Board Recommendation* at 785.

²³²⁷ 47 U.S.C. Section 254(d).

On the issue of the appropriate scope of the revenue base for federal universal service support, I agree with my colleagues that Section 254(d) grants the Commission the authority to assess contributions for the universal service support mechanisms on both the interstate and intrastate revenues of interstate carriers. I believe that our authority derives first and foremost from the plain language of Section 254.²³²⁸ While I support our decision today to decline to exercise the entirety of our authority as to some portions of the federal universal service program, I read the statute as standing for the proposition that Congress granted the Commission authority pursuant to Section 254 to set up a comprehensive federal universal service program that states were free to supplement as desired.²³²⁹ As a result, I think it would be a better reading of Section 254 to allow the Commission to assess universal service contributions on the revenues (either interstate or intrastate) of interstate carriers, because it most accurately embraces the spirit of the national social programs (school and libraries, rural health care, low income, rural, insular, high cost) proposed or mandated in this section.

IV. Proxy Models for High Cost Support for Non-rural Carriers

I highlight the fact that the Commission is not "flash-cutting" to a new federal universal service system in today's order. Like some of my state colleagues,²³³⁰ I am somewhat disappointed that at this time we are not ready to choose a platform for a cost model for high cost support as to non-rural carriers. It would have been my preference to have chosen a model as a platform at this juncture, and continued to refine it over the next months.

That being said, I write to express my continuing support for a cost model approach to high cost support for non-rural carriers. Based on the significant progress made by the Federal and State staffs, the proponents of the remaining cost models under consideration, and other interested parties, it is my firm view that a properly-crafted cost model can be used to calculate the forward-looking economic costs for specific geographic areas to determine the level of support a non-rural carrier may need to serve a high cost area.

I am pleased, however, that we have committed to choosing a forward-looking economic model for non-rural carriers as a platform by year's end. This

²³²⁸ See, e.g., Section 254(a) providing that the Commission implement the rules recommended by the Federal-State Joint Board.

²³²⁹ See Section 254(f), entitled "State Authority," where states are granted the discretion to "adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service."

²³³⁰ State Members of the Federal-State Joint Board on Universal Service, *State Members' Second Report on the Use of Cost Proxy Models*, CC Docket No. 96-45, (April 21, 1997).

ought to give the federal and state staffs enough time to work out any remaining kinks and improve the chosen cost model, so that it is ready for the January 1, 1999 start date of the new high cost support program for non-rural carriers.

V. High Cost Support for Rural Carriers

It is clear that rural telephone carriers face unique issues that non-rural carriers do not encounter. I have heard from many rural carriers who have expressed their view that the cost models that we are developing for non-rural carriers may not be appropriate for them. I remain especially concerned about those rural carriers who face special challenges and circumstances, such as those serving very remote or insular areas.²³³¹

As a result of this concern, I am pleased that during our transition period, all rural carriers will continue to receive high cost support, based upon the existing high cost loop fund, dial equipment minutes (DEM) weighting, and long term support program. Under our plan, rural carriers would not begin to transition to a either a system of high cost support based on forward-looking costs or some other mechanism until January 1, 2001. I believe this will appropriately ease the transition for such carriers, while giving us time to test the effectiveness of cost models for non-rural carriers.

VI. Schools & Libraries Program

With respect to the schools and libraries program, I am very pleased to be supporting this splendid new program to introduce our children and our communities to telecommunications and information services and technologies. As a computer literate Commissioner, I am confident that this program will help catapult our society further into the Information Age, by introducing our citizens and young people to the vast world of information that can be so easily accessible. Having handed the education and library communities the keys to unlock the Information Age for their constituents, I wish them the best in further implementing this ambitious and historic program. It is up to them to purchase and maintain the necessary computers and hardware, develop any necessary software, and train the teachers and librarians to use the telecommunications and information systems. This is a formidable task, but I know how dedicated these communities are to this project.

²³³¹ For example, it is my understanding that the current cost models under consideration do not reflect any data from very remote and insular areas, such as Alaska, Guam, CNMI, American Samoa or Puerto Rico.

We have generally remained true to the carefully considered Joint Board recommendations in this area. While we have made some minor adjustments where the record evidence supported change, overall, we have put into place the program the Joint Board envisioned and agreed upon.

Throughout the Joint Board process, I have consistently expressed my view that our tremendous enthusiasm as to the many benefits of an ambitious and far reaching schools and libraries program must be tempered by careful and prudent consideration of the costs of such a program. We Commissioners are the guardians of the telephone ratepayers. And with that hat on, I continue to remind my colleagues that, at the end of the day, telecommunications ratepayers will pay the bill for all the social programs we adopt in today's decision. In this item, I think we have appropriately balanced these concerns, and I am therefore pleased to support our program because it contains sensible fiscal constraints. For example, we have adopted a "pay-as-you-go" mechanism for the annual \$2.25 billion program. This mechanism means that we will only collect funds on an as-needed basis. This will protect American ratepayers from paying for a program that does not spend all of the monies collected. In addition, the Administrator shall provide the Commission with quarterly reports on spending levels of the program, so that the Commission will have necessary information to make any future adjustments to the program as warranted.

We have also agreed on a sensible start date for the program of January 1, 1998. This should provide schools and libraries plenty of time to make necessary preparations for the program, give state commissions and legislative bodies time to create a comparable intrastate discount program, and also gives the interim administrator time to put into place the necessary administrative mechanisms and fiscal safeguards to operate the program.

I concur in the decision to provide schools and libraries with substantial discounts for Internet access and internal connections, and to allow both telecommunications providers and non-telecommunications providers to receive reimbursement from the universal service fund for offering these services. Although I concur with the competitively neutral result of the majority's decision, I do not agree with the legal rationale for this decision.

The Joint Board recommended that "the Commission adopt a rule providing discounts for Internet access . . . to schools and libraries *pursuant to section 254(h)(2)(A)*."²³³² The Joint Board made a similar recommendation with regard to internal connections.²³³³ Section 254(h)(2) acts as the legal foundation to support

²³³² *Joint Board Recommendation*, 12 FCC Rcd at 323, Para 462.

²³³³ *Joint Board Recommendation*, 12 FCC Rcd at 331-332, para 476.

discounts for non-telecommunications services, the Joint Board reasoned, because of the emphasis on

enhancing access to advanced telecommunications and *information* services.²³³⁴ The Joint Board's decision did not make a distinction based on the identity of the provider. Since the Joint Board's recommendation was both competitively neutral and consistent with the statutory language, I supported it. I would have preferred to rely on the same rationale for this decision.

The Commission's decision departs from that used in the Joint Board's Recommended Decision. The majority dismisses subsection (h)(2), and instead offers a different legal rationale that relies on the identity of the service provider. In the majority's view, schools and libraries are eligible to receive discounts for Internet access and internal connections *provided by telecommunications carriers* under Sections 254(c)(3) and 254(h)(1) because of the general references to "services" rather than "telecommunications services" in those sections. The lack of the qualifying term "telecommunications," the majority reasons, demonstrates that subsection (h)(1) authorizes discounts for all types of services, even non-telecommunications services. However, since subsection (h)(1) clearly applies only to services provided by telecommunications carriers, the majority finds itself in the position of having to develop a different rationale so that the schools and libraries program will fulfill Congress' directive of competitive neutrality. Accordingly, the decision relies on Sections 254(h)(2) and 4(i) for authority to extend such discounts for services *provided by non-telecommunications carriers*.

Unlike the majority, I believe that rather than distinguishing by the identity of the provider, Congress divided section 254(h) by the types of services provided -- with h(1) addressing the provision of telecommunications services, and h(2) addressing access to advanced services, such as Internet access.

Section 254(h)(1)(B) applies only to the provision of telecommunications services by telecommunications carriers. The language of the statute is clear: a telecommunications carrier must provide a discount to schools and libraries for "any of its services that are within the definition of universal service under [subsection] (c)(3)." Section 254(c)(3) states that: "In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h)." Contrary to the majority's interpretation, I believe that the word "services" in this context relates directly back

²³³⁴ *Joint Board Recommendation*, 12 FCC Rcd at 332, para. 476. Section 254(h)(2) provides in pertinent part: "The Commission shall establish competitively neutral rules -- (A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries" 47 U.S.C. § 254(h)(2)(A).

to the "telecommunications services" reference in (c)(1).²³³⁵ The legislative history of (h)(1)(B) supports this reading:

New section (h)(1)(B) requires that any telecommunications carrier shall, upon, a bona fide request, provide services . . . included in the definition of universal service under new subsection (c)(3) . . . at rates that are less than the amounts charged for similar services to other parties, and are necessary to assure affordable access to and use of *such telecommunications services*.²³³⁶

Not finding sufficient reference to telecommunications service in the legislative history, the majority states that, if Congress had intended to limit the scope of 254(c)(3) --and thus (h)(1) -- to telecommunications services, it would have used the phrase "additional telecommunications services" in 254(c)(3). This reasoning, however, simply does not withstand scrutiny. There are a number of instances where the word "services" is used in Section 254 without the modifier "telecommunications," yet the context clearly points to telecommunications services.²³³⁷ In addition, contrary to basic principles of statutory interpretation, the majority's legal theory would render (h)(2) mere surplusage.²³³⁸ Finally, I believe that using (h)(1) and (c)(3) to reach non-telecommunications services, like Internet access, is a stretch and that should not be read to support facilities and equipment like internal connections.

In contrast, Section 254(h)(2) clearly encompasses Internet access because it specifically requires the Commission to enhance access to "advanced telecommunications *and information services*." The legislative history of (h)(2) makes it clear that this includes Internet access:

For example, the Commission could determine that telecommunications and information services that constitute universal

²³³⁵ 47 U.S.C. § 254(c)(1) ("Universal service is an evolving level of *telecommunications services*...") (emphasis added).

²³³⁶ H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 133 (1996) (emphasis added.)

²³³⁷ For example, subsection (c)(2) provides that the Joint Board may recommend "modifications in the definitions of services that are supported by universal service support mechanisms." Under the majority's reading, this would allow the Commission to designate non-telecommunications services for support.

²³³⁸ If the word "services" in (h)(1) includes internet access and internal connections, then (h)(2)'s requirement that the Commission enhance access to advanced telecommunications and information services for schools and libraries would be meaningless. It is a recognized principle that "(a) statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." 2A Sutherland Statutory Construction § 46.06, at 63 (4th ed. C Sands 1973).

service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State and local governments and *information services which can be carried over the Internet.*"²³³⁹

Section 254 (h)(2) can also be read to permit funding for internal connections since it does not just require that such services be provided, but rather that "access" to such services shall be enhanced. I agree with the majority that one way to enhance such access is to provide funding for the inside wiring used in connection with those services.

I also cannot support the legal rationale set forth in today's decision because it could eventually undermine the principle of competitive neutrality recommended by the Joint Board and adopted by the Commission. I also believe it may also be contrary to Congress' clear directive in Section 254(h)(2) that the Commission shall establish competitively neutral rules. In my view, it is not competitively neutral in today's converging telecommunications marketplace to have two sets of rules according to some regulatory scheme of identification. In order to be true to the directive of Congress, I believe that it would be better to proffer the same rationale and legal support for the provision of all telecommunications services -- regardless of the provider's identity. To do otherwise is to risk potentially disparate treatment of such providers in this or other forums.

VII. Rural Health Care Providers

I support today's decision to begin the rural health care program. The Commission did not have an extensive record before it on the telemedicine needs of rural areas. Thus, I believe that the \$400 million annual fiscal cap represents an appropriate measured approach to start a program that will provide telemedicine out in rural America, as Congress intended.

VIII. Consortia for Public Institutional Telecommunications Users

I also express mild concern about our decision to allow consortia of eligible schools, libraries, and rural health care providers to aggregate purchasing and maintenance agreements with ineligible telecommunications users, including private for-profit entities. I agree with my colleagues that there may be many benefits in allowing consortia in some circumstances, in that it may help eligible providers in rural areas obtain higher capacity lines that they otherwise may not

²³³⁹ H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 131 (1996).

obtain. While it is clear that noneligible entities will not receive any universal service support pursuant to Section 254, I remain concerned that allowing such consortia may lead to potential abuse of the Section 254(h) programs, and further complicate the duties of the Administrator.

IX. Insular and Unserved Areas

In keeping with Congress' mandate to make rates affordable, I support the program we adopt today to expand our existing Lifeline and Link-up programs and make them available in all parts of the nation. I am especially pleased that we are making these low income programs available in insular areas, such as American Samoa and CNMI.

Throughout the Joint Board process, I have been concerned about the low telephone subscribership rates in insular areas. While highly advanced telecommunications services rapidly sprout throughout many parts of our nation, subscribership to basic telephone service in places such as Puerto Rico still remains far below the national average. If the Commission is to give true meaning to the words "universal service," I believe it must take a more pro-active role in helping to bring essential telephone service to insular areas at subscribership rates comparable to the rest of the nation.

We take that first step today by committing to release a Public Notice that hopefully will arm the FCC with more data on the affordability of service in insular areas. I strongly encourage local governments in insular areas to help us to collect this information, so that we can take the necessary steps to ensure that consumers in these areas have the opportunity to receive affordable telephone service, and universal service support for their schools, libraries and rural health care providers.

I am also pleased that we have asked our state colleagues for further data on unserved areas in their jurisdictions. I am very concerned about these unserved areas, and hope that we can work jointly to find a solution to make affordable telephone service truly universal.

Finally, I thank my colleagues and their staffs who served on the Federal-State Universal Service Joint Board for their tireless and dedicated devotion to the many complex issues with which we have struggled over the last year. It is without question a better decision due to the participation of our state colleagues and the consumer representative. We should be proud of our achievement.